

**JPA File No.: 05-102**

**AG Contract No.: KR05-1096TRN**

**Project No.: HRF-YYU-0-818**

**Project: Roadway Improvements**

**Section: County 14<sup>th</sup> Street,  
Avenue 7E – 13E**

**TRACS No.: HF118 01C / 02C**

**Budget Source Item No.: HURF**

## **INTERGOVERNMENTAL AGREEMENT**

BETWEEN  
THE STATE OF ARIZONA  
AND  
YUMA COUNTY

**THIS AGREEMENT** is entered into this date December 23, 2005, pursuant to the Arizona Revised Statutes § 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and YUMA COUNTY, acting by and through its CHAIRPERSON and BOARD OF SUPERVISORS ("County").

### **I. RECITALS**

1. The State is empowered by Arizona Revised Statutes § 28-334 and § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The County is empowered by Arizona Revised Statutes § 11-251 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the County.

3. The State has approved the exchange of Highway User Revenue Funds (HURF) pursuant to the amounts and schedule shown in column D of the table below for construction of roadway improvements for County 14<sup>th</sup> Street, Avenue 7E to Avenue 13E. Such funds shall be repaid to the State by withholding from the Yuma Metropolitan Planning Organization (YMPO), Surface Transportation Program (STP) Federal Apportionment and corresponding Obligation Authority as shown in column B and C in the table below. All such transactions to be made in accordance with the schedule shown in column A.

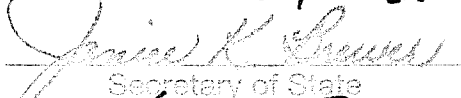
**THEREFORE**, in consideration of the mutual Agreements expressed herein, it is agreed as follows:

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NO. 27894

Filed with the Secretary of State

Date Filed: 12/23/05

  
Secretary of State



<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
Federal Fiscal Year to be Processed	STP Apportionment to be Charged to YMPO	STP Obligation Authority to be Charged to YMPO	HURF (90%) Funds to be Transferred to Yuma County
FFY 2005	\$ 255,806.00	\$ 264,000.00	\$ 237,600.00
FFY 2009	\$ 968,962.00	\$1,000,000.00	\$1,900,000.00
<b>Total</b>	<b>\$1,224,768.00</b>	<b>\$1,264,000.00</b>	<b>\$1,137,600.00</b>

## **II. SCOPE OF WORK**

### 1. The County shall:

a. Provide design plans, specifications and other such documents and services required for construction bidding and construction of roadway improvements for County 14<sup>th</sup> Street, Avenue 7E to Avenue 13E.

b. Be responsible for any contractor claims required for design of the Project for extra compensation due to delays or whatever reason attributable to the County.

c. Advertise for bids and award one or more construction contracts for the Project. Administer contracts for the Project and make all payments to the contractor(s). Be responsible for any contractor claims required to complete the Project for extra compensation due to delays or whatever reason attributable to the County. Comply with all applicable State Laws, Rules and Regulations.

d. Invoice the State for the cost of design and right of way acquisition for the FY 05 funding. Total payment by the State to the County shall not exceed the amounts shown in column D above for the Federal Fiscal Year 2005 which the billing is made.

e. Invoice the State for thirty percent (30%) of the cost of construction for the FY 2009 funding upon award of the construction Project. Total payment by the State to the County shall not exceed the amounts shown in column D above for the Federal Fiscal Year 2009 in which the billing is made.

f. Invoice the State for the cost of construction for each Federal Fiscal Year. Total payments by the State to the County shall not exceed the amounts shown in column D above for the Federal Fiscal Years 2005 and 2009 in which the billing is made, plus any carryover amounts not previously paid in prior years.

g. Invoice the State for 10% of the cost of construction when the Project has been satisfactorily completed and accepted by the County. Total payments by the State to the County shall not exceed the amounts shown in column D above for the Federal Fiscal Years 2005 and 2009 in which the billing is made, plus any carryover amounts not previously paid in prior years.

h. Upon satisfactory completion of construction, approve and accept the Project on behalf of the County, provide for the maintenance, at its own expense. Provide the State with a letter documenting the notice of the approval and acceptance of the Project.

### 2. The State shall:

a. Withhold from YMPO Federal Funds and the Obligation Authority of Federal Funds in an amount of \$255,806.00 in 2005 and \$968,962.00 in 2009 for roadway construction.

b. Within thirty-days (30) after receipt and approval of construction invoices, advance the County HURF funds in the amount of Federal Fiscal Years 2005 and 2009 funding for each invoiced stage for construction.

c. Within 30 days after receipt and approval of construction invoices, advance the County HURF Funds for the remaining 10% of \$237,600.00 in 2005 and \$900,000.00, as shown in Column D, for the final roadway improvements of County 14<sup>th</sup> Street, Avenue 7E to Avenue 13E.

### **III. MISCELLANEOUS PROVISIONS**

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of said Project, except any provisions for maintenance shall be perpetual, unless assumed by another competent entity. Further, this Agreement may be canceled at any time prior to the award of the project construction contract, upon 30 days written notice to the other party. It is understood and agreed that in the event the County cancels this Agreement, the State shall in no way be obligated to maintain said Project.

2. The State assumes no financial obligation or liability under this Agreement, or for any resulting construction Project. The County assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. The County shall require its contractors to name the State and ADOT as an additional insured in the contractor's policies. The County shall also require its contractors to name the State and ADOT as an additional indemnitee in the County's contracts with its contractors. It is understood and agreed that the State's participation is confined solely to advancing Highway User Revenue Funds; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof, shall be solely the liability of the County and that to the extent permitted by law the County hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or nonperformance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees, the County, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys' fees.

3. This Agreement shall become effective upon filing with the Secretary of State.

4. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

5. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

6. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

7. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail, addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 S. 17<sup>th</sup> Avenue, Mail Drop 616E  
Phoenix, Arizona 85007  
(602) 712-7525  
(602) 712-7424 Fax

Yuma County  
Attn: County Engineer  
2351 W. 26<sup>th</sup> Street  
Yuma, Arizona 85364  
(928) 817-5110  
(928) 817-5109 Fax

8. This Agreement is subject to all applicable provisions of the Americans with Disability Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable Federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".


9. Non-Availability of Funds: Every payment obligation of the State and County under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State and County at the end of the period for which the funds are available. No liability shall accrue to the State or the County in the event this provision is exercised as a result of termination under this paragraph.

10. In accordance with Arizona Revised Statutes § 11-952 (D) attached hereto and incorporated herein is the written determination of each party's legal counsel and that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

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**IN WITNESS WHEREOF**, the parties have executed this Amended Agreement the day and year first above written.

**YUMA COUNTY**

By   
CASEY PROCHASKA  
Chairman of the Board

**STATE OF ARIZONA**

Department of Transportation

By   
DALE BUSKIRK  
Division Director

ATTEST:

By   
SUE STALLWORTH  
Clerk of the Board



OFFICE OF THE YUMA COUNTY ATTORNEY  
250 W. Second Street, Suite G  
Yuma, Arizona 85364  
Telephone: (928) 817-4300

Jon R. Smith  
County Attorney

Roger A. Nelson  
Chief Criminal Deputy

Robert L. Pickels, Jr.  
Chief Civil Deputy

INTERGOVERNMENTAL AGREEMENT DETERMINATION

JPA 05-102 [Roadway Improvements, County 14<sup>th</sup> Street, Ave. 7E to 13E], an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Yuma Deputy County Attorney who has determined that it is in proper form and within the powers and authority granted to Yuma County under the laws of the State of Arizona.

No opinion is expressed as to the authority of the remaining parties to enter into said agreement.

Dated November 3, 2005.

JON R. SMITH  
Yuma County Attorney

A handwritten signature in cursive script, appearing to read "E. Fehely", written over a horizontal line.

Edward P. Fehely  
Deputy County Attorney

OFFICE OF THE  
BOARD OF SUPERVISORS  
198 Main Street  
Yuma, Arizona 85364

DAVID R. GARCIA  
COUNTY ADMINISTRATOR



LENORE LOROÑA STUART  
DISTRICT 1  
RUSSELL MCCLOUD  
DISTRICT 2  
CASEY PROCHASKA  
DISTRICT 3  
MARCO A. (TONY) REYES  
DISTRICT 4  
GREGORY FERGUSON  
DISTRICT 5

## MINUTES EXTRACT CERTIFICATION

STATE OF ARIZONA)

ss.

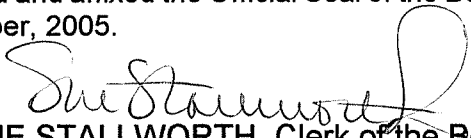
COUNTY OF YUMA)

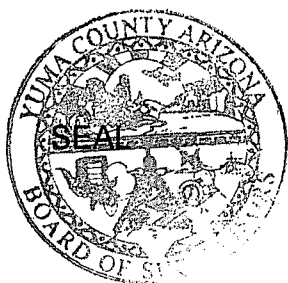
I, Sue Stallworth, Clerk of the Board of Supervisors, do hereby certify that I am required by law to maintain custody of the minutes of the Yuma County Board of Supervisors, and that the following is a true and correct extract of the minutes of the Board of Supervisors' meeting held November 21, 2005:


Supervisor Reyes made a motion, seconded by Supervisor McCloud to approve Consent Agenda Items 2 through 37, excluding Items 21, 24, 25, 30, 33 and 34. The motion carried.

**No. 31: *Development Services*: Authorize the Chairman to sign an Intergovernmental Agreement with the State of Arizona Department of Transportation for the construction, maintenance and financing for the County 14<sup>th</sup> Street Project: Avenue 7E to Avenue 13E.**

In Witness Whereof, I have hereunto set my hand and affixed the Official Seal of the Board of Supervisors. Done at Yuma, the County Seat, this 30<sup>th</sup> day of November, 2005.

  
SUE STALLWORTH, Clerk of the Board



<p><b>TERRY GODDARD</b> Attorney General</p>	<p style="text-align: center;"> <b>OFFICE OF THE ATTORNEY GENERAL</b> STATE OF ARIZONA</p>	<p><b>CIVIL DIVISION</b> <b>TRANSPORTATION SECTION</b> Writer's Direct Line: 602.542.8855 Facsimile: 602.542.3646 E-mail: Susan Davis@azag.gov</p>
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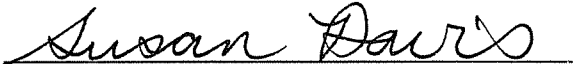
**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR05-1096TRN (**JPA 05-102**), an Agreement between public agencies, i.e., The State of Arizona and Yuma County, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: December 19, 2005

TERRY GODDARD  
Attorney General

  
SUSAN E. DAVIS  
Assistant Attorney General  
Transportation Section

SED:mjf:939268  
Attachment